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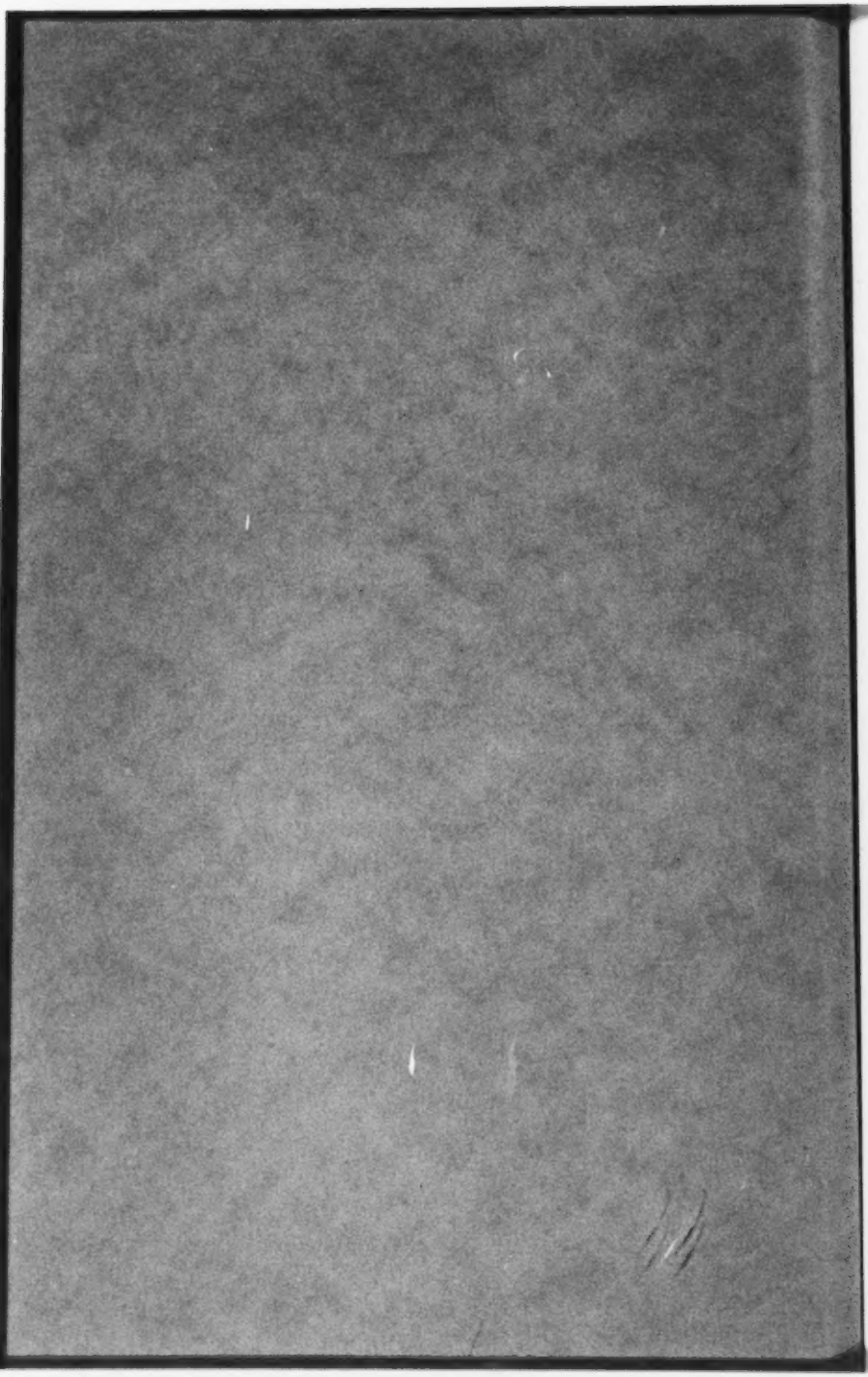

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No._____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

CHARLES BELAND,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

I.

Summary Statement of Matters Involved

Your petitioner, Charles Beland, respectfully shows unto the Court that he was convicted in the United States District Court for the Northern District of Texas at Fort Worth, on the 18th day of July, 1940, upon three counts of a forty-two count indictment which charged forty-one substantive violations of the narcotic laws, the forty-second count charging a con-

spiracy (Sec. 88, Title 18 USCA) to violate the said laws (R. 2-38).

The cause in the trial court was styled: "The United States of America, Plaintiff, vs. Louis Sherman, et al," being No. 7486 on the Criminal Docket of said court (R. 2).

Prior to the plea of petitioner, with the date for trial set for July 1, 1940, and on, to-wit, the 20th day of June, 1940, petitioner filed with the clerk of the trial court, an affidavit of personal prejudice and bias, pertaining not only to this cause, Case No. 7486, but to other causes then pending before the trial court in which petitioner was charged by indictment, viz, Nos. 7077, 7484, and 7485. Said affidavit of personal bias and prejudice directed against the trial court, the Honorable T. Whitfield Davidson, set forth in substance and effect that the said trial Judge before whom the causes were set down for trial, had a personal bias or prejudice against petitioner, stating the reasons and facts in support therof, in accordance with law, and said affidavit of personal prejudice or bias being signed by petitioner "In Propria Persona," duly subscribed and sworn to by said petitioner on the date of the filing of same (R. 1027-1032), June 20th, 1940.

The Clerk of the trial court subsequently refused to accept said affidavit of petitioner setting forth the personal prejudice and bias of the trial Judge, for the reason that it was not accompanied by a certificate of counsel, and that the same, though presented in open court thereafter, on the 28th of June. 1940, by

the Clerk of the court, was not recorded as filed upon instruction of the trial court (R. 1036).

On the 28th day of June, 1940, the date of arraignment, and three days prior to the date set for trial, July 1st, 1940, petitioner presented to the trial court a motion (R. 1033-1035) to the effect that he had filed said affidavit of personal bias and prejudice on June 20th, 1940, as aforesaid, but that the Clerk of the court subsequently notified him he would not accept the filing of same by virtue of the absence of a certificate of counsel on said affidavit; and, in said motion presented by petitioner on that date, the 28th of June, 1940, petitioner further averred under oath that he had no attorney, said motion being signed: "Charlie Beland, Defendant, and Attorney in his own behalf."

The trial court thereupon summarily denied petitioner the right to file said affidavit of personal bias and prejudice because the same did not have attached thereto certificate of counsel (R. 1037-1041).

Petitioner was without counsel representing him on the affidavit of personal bias and prejudice; stated in said affidavit his inability to employ counsel to present said affidavit in his behalf; averring further in said affidavit that counsel in the Northern District of Texas feared the trial Judge because of the trial Judge's action in another case involving petitioner and petitioner's counsel of record, and petitioner recited that he was compelled to represent his own cause insofar as the affidavit and motion was concerned, and, in fact, did represent himself in his own proper person

and as his own counsel in said summary hearing, the trial Court permitting petitioner to save exceptions to the Court's ruling denying him the right to file said affidavit of personal bias and prejudice (R. 1037-1038-1041).

Subsequently, on July 8th, 1940, the cause came on for trial, and on July 18th, 1940, petitioner was found guilty of Counts 16, 18, and 42 of the indictment, and not guilty on the remaining counts. Counts 16 and 18 charged substantive violations of the narcotic laws, and Count 42, as mentioned *supra*, charged a conspiracy to violate the said laws.

After conviction, and before sentence was pronounced, petitioner filed, on the 18th of July, 1940, his motion for an arrest of judgment (R. 61-62), which was overruled by the trial Court and exception duly taken (R. —).

Thereafter, on the 19th of July, 1940, petitioner gave notice of appeal under Rule III (R. 88) setting forth the grounds of appeal (R. 89-90), and thereafter filed his appeal bond (R. 98).

The cause in the United States Circuit Court of Appeals for the Fifth Circuit was styled: "Charles Beland and Bert Barkley vs. United States of America," No. 9601.

The judgment and sentence of the trial Court as to petitioner was that he serve 5 (five) years in an institution to be designated by the Attorney General, generally on Counts 16 and 42 of the indictment, and that he serve 10 (ten) years imprisonment on Count

The judgment and sentence of the trial court as to petitioner was reversed by the Fifth Circuit Court of Appeals as to both Counts 16 and 18 of the indictment, i. e., the substantive offenses, but the conviction on Count 42, the conspiracy charge, was affirmed; hence, this petition for a writ of certiorari is limited to Count 42 of the indictment.

18 of the indictment, said latter sentence to be suspended (R. 80-81).

On the 2nd day of January, 1941, petitioner made application to the Fifth Circuit Court for leave to appeal from the judgment and sentence of the trial Court without having the record printed (R. 1018-1019), and in accordance with the caption of the Clerk of the Fifth Circuit Court of Appeals (R. Vol. I) it is to be noted that petitioner's appeal was considered upon the transcript of record filed in the case of *Chadwick vs. United States of America*, No. 9639, (5th C. C. A.).

On the 2nd day of January, 1941, petitioner filed with the Fifth Circuit Court of Appeals his motion for amplification of the record, setting forth therein that he had filed, in his own behalf, with the Clerk of the trial Court, on June 20th, 1940, an affidavit of personal bias or prejudice directed against the trial Judge, praying the said trial Judge's recusation, and that the Clerk of the trial Court subsequently refused to accept the same for filing, and that thereafter, petitioner filed a motion with the trial Court on June 28th, 1940, setting forth the facts with reference to the filing of said affidavit of personal bias and prejudice, and that thereafter petitioner was denied the right to file said affidavit, was thereafter tried and convicted, as hereinbefore set forth. Petitioner, in said motion to ampify the record, prayed the Fifth Circuit Court of Appeals to order sent up from the trial Court to the Circuit Court of Appeals said affidavit, motion, and a transcript of the sum-

mary hearing of June 28th, 1940, which application of petitioner was granted by the Fifth Circuit Court of Appeals on the 7th day of January, 1941 (R. 1020-1025).

The Fifth Circuit Court of Appeals based its affirmance of the judgment and sentence of the trial Court as to Count 42 of the indictment substantially on the following grounds: (1) That the evidence showed that petitioner was in close and constant contact with the other conspirators; that his name appeared on the books of the New York Syndicate; that he sought out and gave his co-conspirators the name and addresses of prospective customers and generally that the trial Court properly refused to instruct a verdict of Not Guilty as to petitioner under the evidence as to Count 42; (2) That the evidence failed to show that petitioner was guilty of the charges contained in Counts 16 and 18; (3) That the affidavit of *personal bias or prejudice* against the trial Judge filed by petitioner and signed "Charles Beland, In Propria Persona," was not accompanied by certificate of counsel; that at a hearing of preliminary matters, petitioner presented a written motion signed "Charles Beland, Defendant, and Attorney in his own behalf," in which motion petitioner asked the Court to consider his affidavit and permit it to be filed; that petitioner had two counsel of record and that the attorney who tried the case below was present in court and conferred with petitioner but said counsel declined to certify to the affidavit and stated he was not representing petitioner on the motion; that there was no merit in petitioner's contention that he was representing

himself and that said affidavit was insufficient in that it presented no facts showing personal prejudice or bias on the part of the trial Judge and that the allegations therein did not satisfy the statute designed to disqualify the judge because of *personal bias and prejudice.*

Judgment of the Circuit Court of Appeals was entered on the 27th day of February, 1941 (R. 1048), and petition for rehearing was duly filed on March 19th, 1941, (R. 1049 *et seq).* Order denying petition for rehearing was entered by the Fifth Circuit Court of Appeals on March 20th, 1941 (R. 1058). Motion for stay of mandate was duly filed by petitioner on March 31st, 1941, (R. 1059-60) and order granting the same for a period of thirty days from March 20th, 1941, was entered by the Circuit Court of Appeals on March 31st, 1941 (R. 1061).

The specification of errors and points relied upon in the appeal from the trial Court to the Fifth Circuit Court of Appeals, and herein involved, are as follows:

1.

The trial Court erred in denying petitioner the right to file his affidavit of personal prejudice and bias against the trial Judge.

2.

The trial Court erred in failing and refusing to pass upon or test the legal sufficiency of the affidavit of personal bias or prejudice filed by petitioner.

3.

Certificate of counsel to said affidavit of personal bias or prejudice was not necessary, petitioner having no counsel.

4.

The affidavit of petitioner to disqualify the trial Judge was sufficient under the law.

5.

The judgment and sentence of the trial Court as to Count 42 of the indictment was, and is, contrary to the law and the evidence.

———o———

II.

Reasons Relied on for Allowance of the Writ

(1) The decision of the Circuit Court of Appeals herein involves an important question of Federal Law, and is an erroneous decision on an important question of general law which is in conflict with the weight of authority.

(2) The decision of the Circuit Court of Appeals herein involves an important question of Federal Criminal procedure which is in conflict with the decisions of this Court.

(3) The decision of the Circuit Court of Appeals herein is a decision of a Federal question under the

Constitution and the statutes of the United States, violative of the constitutional rights of petitioner.

(4) The decision of the Circuit Court of Appeals herein is one in direct conflict with the provisions of the Constitution of the United States, and the amendments thereto, the laws of the United States thereunder, and the decisions of this Court.

(5) The decision of the Circuit Court of Appeals herein involves an important question of Federal Law, both adjective and substantive, which has not been definitely settled, but should be settled by this Court.

(6) The decision of the Circuit Court of Appeals so far departs from the accepted record and usual course of Federal judicial proceedings, and is an erroneous action and decision of an important question of general law in conflict with the weight of authority, and in a way probably in conflict with applicable decisions of this Court, such as to call for an exercise of this Court's power of supervision.

(7) The decision of the Circuit Court of Appeals herein is in conflict with the decisions of other Circuit Courts of Appeals for other circuits on the same matter.

(8) The judgment of the Circuit Court of Appeals herein in simply affirming the judgment of conviction on the 42nd count as to petitioner, wherein petitioner had received the maximum sentence on Count 16 of the indictment, together with said 42nd count of the indictment, is contrary to law.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript and of the proceedings of the said Circuit Court of Appeals for the Fifth Circuit had in the case numbered and entitled on its docket, No. 9601, "Charles Beland and Bert Barkley, v. United States of America," to the end that this case may be reviewed and determined by this Court as provided for by the statutes and laws of the United States of America; and that the judgment herein of the said United States District Court for the Fort Worth Division of the Northern District of Texas, and the United States Circuit Court of Appeals for the Fifth Circuit affirming that judgment as to Count 42 of the indictment on which petitioner herein was convicted and sentenced, be reversed by this Court and that said petitioner be discharged and for such other and further relief as to this Court may seem proper.

Dated this 15th day of April, 1941.

J. FOREST McCUTCHEON,
1005 Texas Bank Building,
Dallas, Texas.

CERTIFICATE OF COUNSEL

I hereby certify that I have carefully examined the record and, in the light of its contents, consider the Petition for Writ of Cetriorari well founded, and that it is not interposed for purpose of delay.

J. FOREST McCUTCHEON,
Attorney for Petitioner.